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EX-JUSTICE BROWN ON THE POLICY OF OUR DIVORCE LEGISLATION.

A very distinguished citizen, ex-Justice Henry B. Brown, formerly of the Federal Supreme Court, lately expressed himself in an address before the Maryland State Bar Association on the above subject. He announced his views as follows:

"Separation of church and state, which is a cardinal principle of American jurisprudence, is nowhere more applicable than in that which concerns the marriage relation. * * *

"It is not perceived why the partnership created by marriage should so far differ from a commercial partnership that one may be dissolved at pleasure while the other is absolutely indissoluble. A proper regard for the interests of the state as well as the preservation of domestic happiness would seem to require that when the whole object of the matrimonial compact had been defeated by the habitual, persistent and uncontrollable conduct of either party, and that relation which should represent the acme of human happiness is made to stand for all that is most repugnant to our desires and anticipations, a severance of the ties should be permitted.

"I cannot recall a divorce fairly obtained, without fraud and upon due and personal notice to the other side, that did not apparently redound to the welfare of the parties and prove a real blessing."

We do not wish to seem unimpressed by the utterances of one who has stood and still stands so high in the estimation of all of us, but to our mind what was said is so loose and even contradictory on its face as to carry its own condemnation.

Our jurisprudence gives recognition to the marital status as a part of our civilization. It affects capacity in a contractual way. It creates a privacy whose invasion it is against state policy to permit. It gives personal rights and creates personal obligations, enforceable civily and criminally, with respect to other human beings. It creates a quality in criminal offenses committed by or against the partners to the relation. The policy of our national government declares in favor of monogamy, because bigamy offends our moral sense. Our laws say adultery is more heinous than fornication, because marriage is right and just and sacred. Our laws of inheritance know of *nullius filius* only outside of the marriage relation, and make the presumption of legitimacy often irrebuttable. Marriage contemplates all of these things as inhering in and to the contract, and to say that, though they do, "it is not perceived" why such a partnership is not like a mere commercial partnership is, we confess, to us a shock.

Anglo-Saxon civilization takes such careful account of the environments, which hedge woman about, that the policy of no state will permit a man to take a woman on trial and then throw her aside when she needs most his protection. It regards both her protection and that of her offspring more sacredly than to permit her to have the power, upon threat, or solicitation, to agree with him to dissolve that relation as if it were a simple partnership relation.

And the final paragraph of Judge Brown's quoted remarks seems to afford little information. One may obtain a divorce fairly, without fraud and upon personal notice upon any legal ground, but the ground itself might, in another view, be wholly insufficient in justice to the wife, to her offspring and the general good of the community. As to Judge Brown's personal knowledge of the after-life of those who secure divorces so freely in this country, we, of course, can say nothing, but one may easily imagine how small Judge Brown's knowledge as to this may be.

Furthermore, on the morality side of this question we think much might be said. *In limine* it can be said, our common law recognized a moral status. Husband and wife occupied a moral status upon the general assumption, that it was as certainly im-

moral during the life of both for one of the parties to cohabit with another as was the crime of theft. To affront that assumption with a statute to the contrary would have been as violent as to legalize theft. But it was permitted to mitigate the hardships of the situation by allowing divorce *a mensa et thoro.*

If, under changed conditions and a different general, or largely held, belief on that subject, civilization, taking into consideration merely the civil compact, deems that the greatest good to the greatest number, should, for some causes, permit total divorce, at the bottom of all of such legislation is our common law status, still binding the husband and wife, except as expressly modified.

One man may believe it is immoral to countenance divorce *a vinculo* for any ground. He could not consistently with his duty to himself or his state make a compromise with that principle, whether there be a separation of church or state in this country or not. Another might say only one ground is justifiable in morals. His stand would have to be like that of the former, for neither can believe any public policy may be advanced by legalizing what is immoral. It cannot be said the law, merely is for those who in conscience may take advantage of it. The Mormons believe in polygamy, but the moral sense of others would not permit them to practice it.

A large proportion of our countrymen believe it no more than a civil relation, yet these must admit that the compact is treated in legal policy not like any other civil contract, and this is so in every civilization of the world, and always has been so. This conception invests the relation with a sacredness which every instinct teaches us to preserve. Its entire absence and the substitution therefor of a mere business compact, dissoluble at will or on trifling grounds, would indicate that home had lost its real existence; and when this comes the state will look in vain for disinterested patriotism and a healthy morality. Say what you may of separation of church and state, but a Christian country without Christian homes is not to be desired, and Christian homes with no sacredness in the marriage tie is an impossible conception.

Men like Judge Brown ought to beware how "hard cases," which are the exception in married life, should be referred to to justify legislation, whose present tendency seems to aggravate an evil.

NOTES OF IMPORTANT DECISIONS.

CRIMINAL LAW—REBUKE BY COURT OF MISCONDUCT AS CURING ERROR.—The effect of prompt rebuke of gross misconduct of a prosecuting officer was considered in People v. Derwae, 102 Pac. 266, by the California Supreme Court and the majority and dissenting opinions show, it seems to us, more a temperamental, than radical, difference among the judges of that court, the case being reversed.

But when once it is admitted, that abuse may be so flagrant on the part of a prosecuting officer, that no judge, however prompt and correct in his method to cure the fault, may dissipate the injurious influence illegally exerted, we fail to see how what occurred in the case supra could produce two impressions. Defendant was on trial for an attempt to commit burglary. The assistant district attorney asked him how many children he had and if there was not a daughter among them, and then if he had not had trouble with one of his daughters. An objection was sustained to this question, and then, straightway, the state's officer asked if he had not committed incest with that daughter, which was also objected to and sustained and the court admonished the jury that they had nothing to do with defendant's family relations, doing this, it may be admitted, in a very appropriate way. This kind of examination followed questions about defendant being a divorced man, his acquaintance with the chief of police in a certain city in another state and defendant's reasons for not taking his deposition as to good character, instead of that of the postmaster of the town.

If there was not a plain insinuation which no rebuke by a court could displace, then we fail to see how one such could be created and the impression was deepened by the officer's plain disregard of the court's ruling on the question immediately preceding the incest question.

To call such a proceeding before the jury, a trial is to acknowledge that a form of trial suffices, however much a travesty it may be to the eye of justice. That officer should

have been imprisoned for contempt, the trial stopped and the jury discharged.

CONTEMPT — LYNCHING APPELLANT PENDING APPEAL.—The case of U. S. v. Shipp, 29 Sup. Ct. 637, was for contempt of the federal supreme court. The facts show a prisoner confined in Chattanooga jail and his lynching by a mob upon the night of the day Justice Harlan granted him an appeal. The sheriff and his deputies were charged with being in sympathy with the mob and for not making preparation to resist nor in good faith resisting this mob. In decision five judges were for sustaining this charge, and three dissented, Justice Moody not sitting.

The question of whether he was in contempt or not narrowed down to a question of fact. The majority thought that the action of the mob in taking the prisoner, who was in jail, and lynching him was reasonably to be anticipated, and the sheriff was in contempt in making no preparations to resist their attempt to do so. The minority, speaking through Justice Peckham, thought that the sheriff was in about the same situation as to this as the resident federal judge, who seemed to be fully as well cognizant of what was going on as the sheriff, and he was so little apprehensive, that he left Chattanooga the same night for Florida. In reading the two opinions in the case one can but be strongly impressed with the thought, that the sheriff helped to fix on himself the conviction that followed by his indiscretion in talking with a newspaper reporter after proceedings for contempt had been begun. Thus the court said in the prevailing opinion that: "He (the sheriff) evidently resented the necessary order of this court as an alien intrusion, and declared that the court was responsible for the lynching. According to him, 'the people of Hamilton county were willing to let the law take its course, until it became known that the case would not probably be disposed of for four or five years by the supreme court of the United States." Judge Peckham said: "His statement that the mob took action because of the allowance of appeal * * * was but the expression of an opinion by the sheriff," and then the judge makes himself as guilty as the sheriff, in this respect, by saying: "In all probability this was the reason, a reason utterly without justification and disgraceful to those who entertained it."

It is no doubt true, that, if the sheriff willfully or negligently omitted to protect his prisoner, when he should have foreseen the result, he ought to be punished, but the opinion that prevailed in the case much resembles special pleading to get around to its conclusion.

There stands out very prominently in both opinions an admission that there does exist, very widely, the feeling, that interference by the federal court with state court is by an alien court. The federal supreme court admits itself to be a court of "a different though paramount, sovereignty," and that it should hesitate in some matters at least about interfering with state courts, as for example in the fiscal affairs of a state, as see Water Co. v. Boise City, 20 Sup. Ct. 426. A great many people may think themselves justified in criticism of a failure to be reluctant, as that depends upon individual view of a court, when they would cheerfully bow and insist upon others bowing to our great tribunal in interposing where the law requires. This feeling against our great tribunal is not so widespread as it is against the lower federal courts, and they look to the former to restrain the latter.

GOVERNMENT BY INJUNCTION.

What is the meaning of the phrase: "Government by injunction?"

Succintly defined, it is judicial usurpation and oppression. It is the method employed by organized wealth, often through judges of their own suggestion, to fasten upon the necks of the trades unions the yoke of a perpetual industrial enslavement. The phrase implies that the judges who do this work are guilty of usurpation, because they judicially legislate.

Judge Henry C. Caldwell, *clarum et venerabile nomen*, was appointed by Abraham Lincoln, district judge for the state of Arkansas. Afterwards he was made by President Harrison, circuit judge for the eighth judicial circuit of the United States. For thirty years he adorned the bench by his integrity, ability and fearless defense of civil liberty, and, when he retired from active work a few years ago on account of age, he could well say of his judicial career, with far worthier pride than Horace did of his literary labors, *"Exegi monumentum aere perennius, Regalique situ pyramidum altius."* In his address on injunctions before the Missouri State Bar Association in 1898, Judge Caldwell said that the modern uses of the writ of injunction bear no more resemblance to the ancient uses of that writ,

than the milky way bears to the sun, and that by it a judge frames a criminal code according to his own pleasure, whereby acts perfectly innocent in themselves, as standing, walking, talking or preaching on the highway, are made unlawful, and then proceeds to enforce his own judge-made laws without the intervention of a jury, and thus, uniting in himself the functions of legislator, judge, prosecutor, jury and executioner, he always secures a conviction.

Judge Murray F. Tuley, who was for more than twenty years a circuit judge of Chicago, said, in reference to the injunction issued against the striking trainmen of the Wabash Railway in 1903 by the federal circuit court for the eastern judicial district of Missouri: "I am not surprised at any injunction of any kind being issued. I regret it very much, because I believe that the issuing of such writs of injunction brings the administration of justice into contempt. It breeds discontent, and we will reap the whirlwind some day from the seeds sown. The day may come in the not distant future when the working classes will have political control, and will appoint judges who will also issue writs of injunction—in their favor. I see no reason why a writ of injunction should not as well issue against a railroad, enjoining it from discharging any employee for failing to pay such employee a certain fixed rate of wages. It would be no greater departure from the true principles that ought to govern such writs. We judges are getting to be the whole thing in government. We are approaching a condition that will be without precedent in the history of the world, in which the governmental power will be exercised by the judges, with the executives and legislators as mere figureheads in carrying on the government."

Under our form of government, unlike in this respect all others, where the governmental functions are carefully separated, and distributed into three co-ordinate and independent branches, the executive, legislative and judicial, and the legislative given the exclusive power to enact laws, any judicial legislation is totally unwarranted and indefensible. A judge who does this commits a high crime, worse than treason, and, for it, he should be promptly impeached, and removed.

It is practically impossible to defend the trades unions against this deprivation of their constitutional rights without being at once met with the statement, that in all disagreements with their employers, the union workingmen always commit violence, and the defender of corporations and organized wealth indignantly asks: "Do you mean to say that you indorse workingmen when they commit violence?" My reply always is: "No," and I add, "neither do I indorse judges, who commit a greater wrong than any workingman ever committed, when they violate the constitution they have sworn to support.

The record in the case of Fox Brothers Manufacturing Company against the United Brotherhood of Carpenters and Joiners of America, et al., tried in the circuit court of the United States at St. Louis, better than any other case illustrates the falsity of these aspersions upon the trades unions, and the denial to them by the federal court, of rights solemnly guaranteed by the constitution of the United States, as well as by that of Missouri, of which state the defendants, with one exception, were citizens.

During the trial of that case the judge spoke as follows: "It is simply a question of who they will work with, and who they shall not work with. I have stated this to you frankly, because I believe that a plain statement may expedite the trial of this case. There is no charge here that these parties have been guilty of any violence, or that they have resorted to anything which is to be condemned. This proceeding has been conducted by these gentlemen in a very dignified manner, and if they bring one of these clean cases up to a higher court, it might, perhaps, find it necessary to change some of the former rulings that have been made. We know that even the judges of the highest courts are sometimes influenced by the particular facts in a certain case. This is a clean case."

After having given the defendants this

certificate of good character, the judge condemned them and took away from them the rights solemnly guaranteed to them by the I, V and XIII Amendments to the Constitution of the United States, as well as by the Constitution of the State of Missouri.

This shows that, even where workingmen have not been guilty of any violence, a judge will ride rough-shod over all constitutional obstacles in the path of his purpose. The case of the State v. Van Pelt, decided by the Supreme Court of North Carolina in 1906, is the best reasoned, the profoundest and the most analytical of all decisions rendered by judicial tribunals in the United States in these so-called boycott cases.

I commend the attention of judges everywhere, the concurring opinion of Judge Douglas in that case. He says: "We are assured that, if we break up the labor organizations, there will be no more strikes, and that peace and order will reign throughout the land. When Kosciusko fell and Poland lay once more beneath the Cossack's heel, Sebastiani announced that 'Order reigns in Warsaw;' while Louis Napoleon in seizing the throne of France, declared that, 'The Empire is peace.' North Carolinians seek not the peace of despotism, but that peace alone which follows the mutual recognition of equal rights, and the impartial enforcement of just and equal laws."

Let them also ponder these words of Abraham Lincoln: "Labor is prior to, and independent of capital. Capital is only the fruit of labor. Capital could never have existed if labor had not first existed. Labor is the superior of capital, and deserves much the more consideration."

The decree in the Fox case contains, among others, the following provisions: "Provided, however, that nothing in this order is to be construed as prohibiting the defendants, or any of them from declining, or refusing to accept employment, or retain employment from any persons for any cause whatsoever, said defendants each acting in his individual capacity, and not as members of an organized body." The judge who entered this decree did not venture to enter a mandatory injunction, commanding the union carpenters to bestow the labor of their bodies upon the material manufactured in Fox Brothers' planing mill, but he accomplished the same purpose by enjoining them from agreeing as a union, not to work on Fox Brothers' material. This decree squarely violates XIII Amendment to the Constitution of the United States, and establishes peonage by judicial decision. None of these carpenters were employed by Fox Brothers, and yet this decree gives the latter a property right in the labor of these defendants by ordering them, under penalty of fine and imprisonment, not to quit working as a union on material manufactured at Fox Brothers' planing mill. Under this decree, union workingmen do not own the labor and skill of their own hands, and brains, but these are at the discretion and arbitrary disposal of courts.

A man's ownership of his own body, and his right to dispose of the same when, where and in what manner, and under what conditions he pleases, is absolute, and is protected and buttressed by the XIII Amendment to the Constitution of the United States. The maxim, "Sic utere tuo ut alienum non laedas," does not apply to the passive withholding of the labor of one's body. A man is not seventy-five per cent a free man, and twenty-five per cent a slave. He is one hundred per cent a free man. A man is not a free man when acting as an individual, and a slave when acting in association with others.

There is no such thing as an unlawful conspiracy to do a lawful act. The Supreme Court of Montana said in 1908, in the case of Lindsay & Co. v. Montana Federation of Labor: "But there can be found running through our legal literature many remarkable statements, that an act perfectly lawful when done by one person, becomes by some sort of legerdemain criminal when done by two or more persons acting in concert, and this upon the theory, that the concerted action amounts to a conspiracy. But with this doctrine we do not agree. If an individual is clothed with a right when acting alone, he does not lose such right merely by acting with others, each of whom is clothed with the same right."

The United Brotherhood of Carpenters

and Joiners of America in their annual convention held in Milwaukee in 1904, resolved, and put it into their constitution, that they would not handle, or work on "trim" made at any non-union planing mills in the United States. They did not pick out any single mill, but laid down this line of policy in regard to all non-union mills. According to the decree of the federal judge, this was a boycott, and therefore unlawful. If it is a boycott, then it is protected by the Constitution of the United States and of every state in the union. Do these men own their own bodies, or are they owned by the courts? Have the operators of non-union planing mills a property right in the bodies of union carpenters? A man can abstain from working or can quit working for a good reason, or a bad reason, or for no reason whatsoever, singly or collectively, else he is a slave.

In the Fox case the union carpenters circulated a list of planing mills in St. Louis and vicinity, employing union carpenters, with a foreword, to the effect, that they would handle "trim" manufactured in these mills, and not that made in non-union mills. They did not mention the name of Fox Brothers' mill. Yet they were enjoined from publishing this list in a similar suit, and fined. This order violates the First Amendment to the Constitution of the United States, as well as the Constitution of the State of Missouri, in that it abridges the freedom of the press. Mark you, all these defendants, save one, were citizens of Missouri, and the Supreme Court of that state in the case of Marx-Haas v. Watson had expressly decided that no publication, however damaging, could be enjoined, because when the Constitution guaranteed the freedom of the press, as that of Missouri does, it meant what it said. The Supreme Court of the state recognized the paramountcy of the constitution and gave full force and effect to the maxim, "Ita lex scripta est.

Thomas Jefferson, one of the greatest jurists (and the greatest statesman) the world has produced said, speaking of judges in general, and federal judges in particular: "They have, with others, the same passions for party, for power and the privilege of their corps. Their maxim is, 'It is the business of a good judge to extend his jurisdiction,' and their power is the more dangerous, as they are in office for life, and not responsible, as other functionaries are, to elective control."

Abraham Lincoln, a devout disciple of Jefferson, said: "As a result of the war corporations have been enthroned, and an era of corruption in high places will follow, and the money power of this country will endeavor to prolong its reign by working upon the prejudices of the people, until all wealth is aggregated into the hands of a few, and the Republic is destroyed. I bid the laboring people beware of surrendering the power, which they possess, and which, if surrendered, will surely be used to shut the door of advancement for such as they, them, until all liberty shall be destroyed."

and fix new burdens and disabilities upon

The court of appeals of New York, a court which has always been distinguished for the learning and ability of its members, held in the case of Jacobs v. Cohen, decided in 1905, that a contract was lawful, which was made by a trades union with their employer, by the terms of which they agreed to work for a definite period without any strike and at union wages and for union hours, and their employer agreed to employ only members of the union during said period. Yet the Carpenters' Union was enjoined in the Fox case from making similar contracts. The federal court thereby violated the Fifth Amendment to the Constitution of the United States, which prohibits any branch of the federal government from depriving any one of life, liberty or property without due process of law. The right to contract for the sale of the labor of one's own body, on one's own terms, is both a liberty and a property right. The principal object of the Bill of Rights is to protect natural rights.

We are constantly being told that this is an age of organization, that it is natural evolution, inevitable, and that any one who opposes it belongs to the ante-diluvians, and even some judges have caught the fever, and re-echoed the cry. Of course, they

mean the organization of wealth alone. Some courts say, the workingmen have a right to organize, but the moment they do anything to protect their wages, or improve the conditions under which they work, these courts crush them.

The right to organize, ex vi termini, implies the right to make rules and regulations, and to elect officers to enforce these rules against their own members. When these courts are confronted with the fact that the acts of the trades unions are, on their face, lawful, they fall back upon the doctrine, that the motives of the workingmen are bad and malicious, and, therefore, their acts unlawful. The answer to this was completely made by Jeremiah Sullivan Black, formerly Chief Justice of the Supreme Court of Pennsylvania, and Attorney General of the United States, a statesman and jurist of the first rank, and a patriot withal. In the case of Jenkins v. Fowler, reported in 24 Pa. 308, Judge Black says: "As long as a man keeps himself within the law by doing no act which violates it, we must leave his motives to Him who searches the heart." And the Supreme Court of Tennessee said in the case of Payne v. W. A. R. R., 13 Lea 507: "It is incredible that the courts of law should be perverted to the trial of motives of men, who confessedly had done no unlawful act. It is suggestive of the day of constructive treason."

The petition in the Fox case, as well as in all other suits brought against trades unions, contains the stereotyped allegation, that the defendants had combined, confederated and conspired to establish a monopoly of labor, etc. There can be no such thing as monopoly of labor as long as men are free. Monopoly relates only to commodities, to goods, wares and merchandise, and free human beings are not commodities, neither are they goods, wares and merchandise.

The courts have said over and over again that, in trade, though one be ruined by competition, however malicious, he can have no redress. There is an active, bitter competition going on between union and non-union workingmen, and the union workingmen are entitled to the same interpretation of the law that applies to merchants and manufacturers. Lord Shand, one of the law lords of the House of Lords, said, commenting on the case of Allen v. Flood: "The case was one of competition in labor which, in my opinion, is, in all essentials, analogous to competition in trade, and to which the same principles must apply."

In the year 1309, in the third year of Edward II, the English Parliament enacted a law restraining chancery jurisdiction, and forbidding arrest, conviction or forfeiture without a jury, a principle, says Professor Stimson of Boston in his work on Federal and State Constitutions, only recently revived in the Constitution of Oklahoma, which allows trial by jury in certain contempt cases. Federal Judge Wright, in Washington City, recently sentenced Samuel Gompers, John Mitchell and Frank Morrison to imprisonment for an alleged publication by them in the American Federationist of the fact, that the Buck Stove and Range Company and J. W. Van Cleave are the foes of organized labor (and for that reason the unions would not patronize them) on the ground that such publication violated an order of the federal court enjoining such publication.

When the distinguished Judge Alton B. Parker argued to Judge Wright on behalf of these defendants that such order violated the I Amendment of the Constitution of the United States, Judge Wright replied, that this amendment was only an inhibition upon the Congress passing any law abridging the freedom of the press.

The sages who framed the Constitution of the United States vested the exclusive power of legislation in the Congress, and having done so, they did not deem it necessary, when framing the First Amendment, to inhibit expressly any other branch of the government from abridging the freedom of the press, except the legislative.

Judge Wright also said that the injunction only incidentally abridged the freedom of the press. The Constitution nowhere gives the privilege of incidentally abridging the freedom of the press. The protection of the Constitution is either absolute, or it is worthless. It speaks in the plainest, clear-

est English, and it means what it says. The whole national government rests on the Constitution. A judge has no authority or jurisdiction to make any decree or order which violates the Constitution.

Henry Watterson said in his brilliant address on Abraham Lincoln, "that Lincoln stood in awe of the Constitution, and of his oath of office." What we need in these so-called boycott cases is that the judges should stand in awe of the Constitution and of their oaths of office.

The most atrocious and injurious libel or slander cannot be enjoined. The injured party must be content with a criminal prosecution, and a civil action for damages, even though the libeller be insolvent, and a judgment against him worthless. Any tyro in the law knows this. But, says the enemy of the trades unions triumphantly: Any one libelled has his action for damages against the libeller, in spite of the constitutional provision against abridging the freedom of the press. The union workingman replies, that he holds himself amenable to all actions for libel, but that, if by the assertion of his constitutionally guaranteed rights, damage ensues, it is damnum absque injuria, and he asks when, and where was this time-honored rule of the law abrogated? He asserts that, under the Constitution, no injunction padlock can be put on freedom of speech or of the press.

But the argument is made that, as a court of equity has jurisdiction to enjoin a boycott, such court can enjoin all means used in furtherance of the boycott, and thereby incidentally enjoin a publication made as part of a boycott. The complete answer to this is, that it is the boast of equity that it will not allow that to be done indirectly, which cannot be done directly. If, therefore, a court of equity cannot, by direct decree, enjoin a publication because it would violate the First Amendment to the Constitution, it cannot accomplish the same end in an indirect or incidental manner.

Judge Cooley, in his great work on Constitutional Limitations, says, that the First Amendment to the Constitution of the United States "is supposed to form a shield of protection to the free expression of opinion in every part of our land." And again he quotes De Lolme as follows: "Liberty of the press consists in this—'That neither courts of justice nor any other judges whatever, are authorized to take notice of writings intended for the press, but are confined to those which are actually printed.'"

The Supreme Court of the United States seem to recognize this doctrine. In the recent case of Patterson v. Colorado, the court says, speaking inter alia, of the First Amendment to the Constitution: "In the first place, the main purpose of such constitutional provisions is to prevent all such *previous restraints* upon publications as had been practiced by other governments, etc. The Federal Supreme Court also said in re Jackson, 96 U. S. 727: "Nor can any regulations be enforced against the transportation of printed matter in the mail, which is open to examination, so as to interfere in any manner with the freedom of the press. Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value." Under this decision, then, the carpenter's shop list could not be forbidden circulation through the mails by the government or any of its departments. *A fortiori*, therefore, no court of equity can enjoin the carpenters from passing it around from hand to hand.

In all trials for libel, both civil and criminal, the defendants are entitled to a trial by jury. This judicial oppression brings these courts of equity under the animadversion of the great Lord Coke's biting sarcasm that "the court of star chamber was a court of criminal equity."

In the famous trial of the "Seven Bishops," the most famous judicial trial of history, all the judges of the high court, who sat in the case, bullied the jury most shamefully, and tried to force them to convict the bishops, but the jury acquitted them, and saved the honor of England, and gave indisputable proof of the absolute necessity of juries, as the only bulwark against the tyranny and oppression of prejudiced judges

For the benefit of those who are never tired of decrying trial by jury, and extolling the divine infallibility and impartiality of judges, I will add that John F. Dillon, who at one time was Chief Justice of the Supreme Court of Iowa, and afterwards federal circuit judge, says in the Storr lectures, which he delivered before the law school of Yale University, that, in his opinion, founded on observation and experience, juries are better judges of facts than judges, and that Justice Samuel F. Miller of the Supreme Court of the United States told him he was also of the same opinion.

We hear a vast deal about the vested rights of property. Workingmen have some vested rights also. They have a vested right in the labor and the skill of their own hands, and brains—to bestow them and to withhold them—when, where and how they please. They also have a vested right in the protection of the I, V and XIII Amendments to the Constitution of the United States.

I would recommend that judges read and inwardly digest the following pregnant words of Richard Olney, former Attorney General of the United States. Mr. Olney as amicus curiae in the case of Platt v. Railroad Co. (November, 1894), 65 Fed. Rep. 660, said: "Whatever else may remain for future determination, it must now be regarded as substantially settled that the mass of wage-earners can no longer be dealt with by capital as so many isolated units. The time is past when the individual workman is called upon to pit his single, feeble strength against the might of organized capital." And speaking of the restrictions imposed upon laborers by the courts he said: "They cannot help knowing that organized capital is not so restricted. And when treatment so apparently unfair and discriminating is administered through the instrumentality of a court, the resulting discontent and resentment of employes are inevitably intensified, because the law itself seems to have got wrong, and in some unaccountable manner to have taken sides against them."

The distinguishing characteristic of the English-speaking race is their deathless love of constitutional liberty. John Hampden was the real hero of the resistance to the unconstitutional acts of Charles I. Hampden said: "I am a rich man and can easily pay the shilling tax which Charles Stuart has levied against me, but he has levied it in violation of the Constitution of England, without the authority of Parliament, and I will not pay it," and he took up arms and rebelled against the lawful government of England, and laid down his life to vindicate constitutional liberty. John Hampden's name is inscribed in the topmost niche of the temple of fame, and, as long as men hate tyranny and love liberty, they will love and cherish his deathless memory.

The destruction of constitutional liberties by the judiciary, their supposed support, is far worse than if done by a king or executive. A one-man power is always intolerant of constitutional limitations, while judges are supposed to be unalterably in favor of them.

CORNELIUS H. FAUNTLEROY.

St. Louis.

WATERCOURSES — POLLUTION — RECOVERY OF DAMAGES.

MEXIA LIGHT & POWER CO. v. JOHNSON.

Courts of Civil Appeals of Texas, June 12, 1909.

The owner of premises on which he keeps hogs, and through which runs a stream, though knowing they are being killed by drinking the water polluted by oil, which the owner of adjoining premises is negligently allowing to escape with knowledge of the facts, need not remove them, but may allow them to remain, and recover the damages.

BOOKOUT, J.: This suit was brought by Dave Johnson against the Mexia Light & Power Company, a private corporation, in the justice court, to recover damages for the killing of his hogs, and resulted in a judgment in that court in his favor in the sum of $150, from which it appealed to the county court, and upon a trial in that court on September 1, 1908, before the court and a jury, plaintiff recovered judgment for $165, from which judgment it again appealed to this court.

CONCLUSIONS OF FACT.—The appellee was in possession of a tract of land lying on the west side of the Houston & Texas Central Railroad in the town of Mexia, Limestone County, through which there was a running branch of water. The appellee was in the occupation of raising hogs for market on this land, and had a large number of hogs thereon during the months of November and December, 1906, and January and February, 1907. South of said land this appellant maintains its electric light plant. in the operation of which it uses oil as fuel. Oil was permitted to escape from the premises of the electric light plant and gather in the branch flowing north through the premises of appellee, which the hogs drank, causing them to die. The appellant was negligent in permitting the oil to escape, and as a result appellee sustained damage in the amount of the verdict and judgment.

CONCLUSIONS OF LAW.—Complaint is made of the court's refusal to submit appellant's requested charge instructing a verdict for defendant. It follows from our conclusions of fact that there was no error in the court's action in this respect. The appellant, in permitting the oil to escape and go upon the land of another, causing injury to his property, was liable for such injury. The evidence shows that the agent of appellant was notified by appellee of the escape of the oil, and that it was killing his hogs.

Appellant requested two special charges as follows: "At the request of the defendant you are charged that the defendant was not granted a charter until on September 26, 1906, and hence had no legal existence before that time. Therefore, for any injury or wrong done before that time, you cannot, in any event, find against the defendant." "At the request of the defendant you are charged that it is shown by the evidence that the defendant did not take charge of the light plant until January 1, 1907. Hence you will not, in any event, find for the plaintiff any wrongs or injury and consequent loss that may have occurred before that time." There was no error in the refusal of these charges. The court's charge restricted a recovery to the hogs which died during the months which appellant was in the control of the electric light plant. It was conceded that during the months of January and February, 1907, the appellant was not only in control, but was operating the plant, and the jury only found for appellee the value of the hogs dying in the months of January and February, 1907, the wording of the verdict being as follows: "We, the jury, find in favor of plaintiff, Dave Johnson, for one hundred and sixty-five dollars and fifty cents ($165.50) for hogs lost in the months of January and February, 1907. S. Jackson, foreman." This verdict shows that the jury only considered the damage done to plaintiff during the months of January and February, 1907.

For the same reason there was no error in refusing appellant's requested charges Nos. 4 and 5, the refusal of which is made the basis of the ninth and tenth assignments. The main charge instructed the jury that, unless the jury were satisfied the plaintiff's hogs died from the effect of drinking crude oil, which defendant permitted to escape from its premises and flow or run into the pasture of plaintiff, they should return a verdict for defendant.

The eighth paragraph of the court's charge is assailed as erroneous. This paragraph reads: "If, however, you find from the evidence that said hogs died from the effects of drinking said crude oil, but do not find that defendant was in control of the plant during the months of November and December, 1906, you will find for plaintiff the value of the hogs that died during the months of January and February, 1907, if any died during said time from the effects of drinking said oil flowing from this defendant's premises, while owned or controlled by defendant." It is contended that it is the duty of a party owning property which he knows is being injured by another to exercise ordinary care to protect himself against such loss, and his failure to do so will preclude a recovery for such loss as he might have prevented in the exercise of such care. This proposition is not sustained. The appellee owed the appellant no duty to remove his hogs from their pasture, and was not guilty of contributory negligence in not removing them. The appellant was notified of the escape of the oil and its effect upon appellee's hogs. It is not shown that anything was done after such notification to prevent its escape. Benjamin v. Ry. Co. (Tex. Civ. App.), 108 S. W. 408.

There was no error in overruling appellant's motion for new trial. and the assignments of error complaining of the court's action in so doing are overruled.

Finding no reversible error in the record, the judgment is affirmed.

NOTE—*Contributory Negligence Not Available to Defendant in a Nuisance Case.*—The opinion in the case of Benjamin v. Ry. Co. supra, speaking of the plaintiff, whose cattle were injured in the same way said: "Nor was it incumbent on him to show he used ordinary care in handling his cattle. That is a defense that rests with the defendant. Nor did he have to show diligence in not placing them in other places or securing other pastures in which to place them.

or in not selling them as soon as he could find a market. He had no other water for his cattle to drink and it did not devolve upon him to remove his cattle from said premises to prevent a tort and thereby secure himself from damage, unless he could do so at moderate expense. He was not bound to sell his cattle as soon as he could find a market, or at all if he did not wish to. We recognize the rule that where wrong is committed and injury results therefrom, the injured party must lessen the damages that flow therefrom 'if he can do so by ordinary effort and care, or at a moderate expense," but we do not think this case one that authorized the court to charge the jury the burden was on plaintiff, to entitle him to recover, to show that he had not failed in using proper care."

We have given this lengthy extract and feel like criticising it as a sort of wishy-washy declaration leaving the situation worse confounded than at the beginning. What we hope to show in this annotations is that there is not here a mere question of burden of proof, but a distinct principle in damages from injury from nuisance or continuing trespass different from damages from injury from negligence, wantonness or malice exhausting itself in a single act. We have found nowhere a clearer statement of the distinction alluded to than is contained in the syllabus by the court in Satterfield v. Rowan, 83 Ga. 187, 9 S. E. 677, as follows: "The principle that the defendant may reduce the recovery for an injury resulting from his negligence by showing that the plaintiff did not exercise ordinary care to diminish or avoid the damage, does not apply where the act complained of is not a mere act of negligence, but a positive continuous, tortious act, committed by defendant in carrying dirt and ore from a mine and washing it in a stream flowing through the land of both parties and thereby producing continued adulteration of the plaintiff's water." There is no beating about the bush in the kind of statement, such as we find in the excerpt above. Mr. Justice Simmons (*nomen venerabile*) shows in his opinion that this was not a case of negligence, but an invasion of one's rights, and plaintiff did not have to do *anything* to avoid its consequences. Plaintiff "did nothing and he had a right to do nothing; and if they (defendants) invaded his rights, they were liable to him for any damages which he sustained by reason of such invasion." What the Texas court says about "moderate expense," etc., looks effeminate.

In an Iowa case the defendant attempted to plead plaintiff's contributory negligence in additionally fouling the stream—adding other pollution thereto—but it was held the doctrine of contributory negligence does not apply where nuisance is charged. It was said: "He (the plaintiff) may be content to live in a home rendered in some degree unpleasant and unhealthful by his own fault, and permit his live stock to drink from a stream which he has rendered to some degree impure * * * but his inefficiency in the case of his own premises has no effect to justify an upper proprietor in converting the stream into a sewer. All these conditions may be shown as affecting the amount of his damages, but 'they do not go to his right of recovery. With scarcely a discordant voice the authorities agree that liability for a nuisance does not depend upon the question of defendant's negligence. If such liability does not so turn, there can be no such thing as contributory negligence on the part of plaintiff." Bowman v. Humphrey, 109 N. W. 714, 6 L. R. A. (N. S.) 1111. This case cites much authority, and there is a note in L. R. A. The Bowman case was reaffirmed in Vogt v. Grinnell, 110 N. W. 603, the prior case of Ferguson v. Firmanich Mfg. Co., 77 Iowa 576, 14 Am. St. Rep. 319, being expressly overruled in the Bowman case.

In Virginia it was held that a lower riparian proprietor acquiring land on a polluted stream after its pollution and with knowledge thereof, was not estopped from maintaining his action to recover damages for the pollution. Virginia Hot Springs Co. v. Grose, 106 Va. 476, 56 S. E. 222.

In Brown v. Gold Min. Co., 86 Pac. 361, the Oregon Supreme Court reversed the lower court, which dismissed the bill of plaintiff seeking to restrain the pollution of a stream from tailings from a quartz mill, upon the ground that farming is as much entitled to protection in the arid region as any other business, and a prior appropriator's rights are as sacred as those of a riparian owner. Contributory negligence was set up there and also estoppel, by plaintiff being the employee of defendants in the erection of their mill, and made no objection, but these defenses were not regarded. It was urged that plaintiff could obtain water elsewhere, but the court said: "Because he might possibly secure water for his family and for his stock at other places on his land than the streams mentioned, does not impose on him the duty of resorting thereto in order that a quartz mill may be operated." Very much on the line of this case is that of Silver Spring B. & D. Co. v. Wauskuck Co., 13 R. I. 611.

In the case of Phila. & R. R. Co. v. Smith, 64 Fed. 679, 12 C. C. A. 384, 27 L. R. A. 131, the defendant claimed that the court should have instructed the jury that "the plaintiff was bound to keep open his spring-run ditch upon his own land, and if the situation of the ditch was such that, from freshets or other causes, the ditch became filled, he cannot recover, if his negligence to keep the ditch open contributed to his injury." The court said: "The doctrine of contributory negligence has no application. One who decisively contributes to bring a mischief on himself may not impute it to another, but he who does hurt to his neighbor cannot escape liability for the damage thereby occasioned by showing that the person he has injured has also sustained other or additional damage of the same character through separate acts or omissions of his own. In such cases each party is chargeable with the consequences of his own conduct, and neither of them is at liberty to shift his burden to the shoulders of the other."

We take it, therefore, that while the principal case was correctly decided, that, nevertheless, the principle should have been more clearly stated than it appears to have been in the authority on which the principal case is based. To visit a nuisance upon one and then say he cannot recover full damage therefor, where by moderate expense he could avoid it, is not a sound doctrine. The committer of the nuisance has a positive duty, viz.: to abate it. C.

JETSAM AND FLOTSAM.

ARTICLES OF ASSOCIATION OF THE JOY COMPANY, UNLIMITED.

Williams Allen Wood, of the Indianapolis Bar, in Life.

Article I. Name.—The name of this association shall be The Joy Company, Unlimited.

Article II. Object.—The object of this association, in furtherance of the rights of life, liberty, and the pursuit of happiness and in the interest of good comradeship, is to promote the use of the easy chair, the stein, the soothing weed, and the story; by means of crackling logs in a broad fireplace, to incite to the geniality that knits closer the group of hearty talkers and contented listeners; to induce boisterous laughter, merry songs, lusty choruses, and strange, brave and romantic stories; to journey in the world of imagination and, though there be snow and storm outside, to wander in green forests, to gather the blossoms of the peach and hawthorn, to breathe the perfume of scented shrubs, to hear the night birds sing, the streamlets purl, the far-off harmony of piano and voice, to gaze on stars as thick as leaves of Vallombrosa, to have fond sweethearts, and to enjoy the lunarian rights and privileges of an Italian night in June; to enjoy all these rights and privileges in their seasons. to use such nicknames, terms of affection, handclasps and caresses as will promote good feeling and show the love and regard in which companions are held; to give words of praise and encouragement to one another, to assist one another in every way possible not inconsistent with our mutual strength and our personal sense of justice and to foster one another's confidence in the strength of manhood and one another's hope of living up to high ideals and attaining high accomplishments; to preserve pleasant memories—the swimming pools and sand banks of our youth, the coasting hill of winter days, the Crusoes and Alices of Wonderland that whiled away our evenings, the games of ball and the athletic contests, the riding, hunting and fishing parties, the luring dances, the lyric thrills of first love, the poets that expressed for us the bright and happy colors of life and the beauties of crowded hours, and all those caressing or inspiring memories of larger experiences, deeper emotions, more vivid passions and more intellectual avocations that make life rich, colorful and epic in our maturity; to do all these things, and to do them before the world, so as to invite competition on the part of all mankind, that the profits of this association may be cumulative and perpetual.

Article III. Home Office.—The home office of this association shall be any place where there are a sufficient number of good fellows, two or more, to create warmth and delight by their presence.

Article IV. Capital Stock.—The capital stock of this association shall be unlimited, but an amount necessary to create an atmosphere of good cheer shall be sufficient for working capital, and shall be contributed by the members in such ways and proportions as they may see fit—provided the total is always enough to keep the association alive—and the profits shall be distributed according to each member's capacity to contribute and enjoy. All surplus profits shall be turned over to the world at large.

Article V. Seal.—The seal of this association shall consist of the expression of faith and love, showing through a cordial smile, and shall be used whenever it is necessary to validate any of the acts of this association or of any of its members.

COMMITTEE OF NEW YORK SUPREME COURT JUDGES WOULD ABOLISH DEMURRER.

How can "the law's delays," notoriously vexatious and costly in the adjudication of commercial cases, be reduced to a minimum of annoyance and expense to the nation's vast commercial interests? This question is being dealt with by the judges of the first department of the Supreme Court of New York State.

Though their efforts are primarily directed at securing reforms in laws and practices that shall achieve or approximate the end in view so far as New York State is concerned, their campaign, if such it may be termed, in the event of success, may influence the courts of the entire United States.

The committee of Judges made public on August 8, 1909, the results of their consideration of the question, as far as they have advanced it. They do not pretend to have solved fully the problem and they ask advice upon it.

They start with the premise that the public's chief concern is in "the reduction of litigation to actual differences and the abatement of the law's delays in the composure of commercial cases."

They make on this point suggestions, which, in brief, are for simplification of privileges in pleadings, both as to substance and in time of making; for reform in court assignments through which justices making orders in such cases shall be the ones to hear arguments upon these orders; for laws reducing the time within which such actions may begin and requiring precise and unequivocal statements of facts as constituting causes of action.

An important recommendation is for the practical abolition of the demurrer in civil actions. In place of the demurrer, that so frequently flagrant method of securing delay, on the part of the litigant whose cause is weak or unjust, the judges would compel the litigant to answer and have the case brought to trial, when his objections to the complaint should be thrashed out and judicially decided on the spot, and, if not then sustained, the trial of the action to be proceeded with.

The report is signed by the members of the committee appointed to make the investigation —all justices of the supreme court in New York City—Charles F. MacLean, chairman; James A. Blanchard, Vernon M. Davis, Charles L. Guy and Irving Lehman, secretary.

CORRESPONDENCE.

"PERMITTING" PRIVATE TRESPASSING UPON PUBLIC PROPERTY.

Editor Central Law Journal:

The recent case of New York Steam Co. v. The Foundation Co., 87 N. E. 765, suggests some fundamental principles which the court seems to have overlooked in rendering that decision. The title to a public highway by dedication or when obtained by proceedings of eminent domain, vests in the sovereign, which, in our government, is the state. Consequently the city

of New York had no title to give away, and when the Foundation Company built its vault outside of its real estate it became a trespasser upon the state of New York. This is no new principle and it is because of this elementary law that a state cannot sell rights in public highways, and, for a stronger reason, cannot give them away. Consequently, the courts have held that a city council has no authority to grant a right to put a bridge or private wire across a public street or alley. Townsend v. Epstein, 49 Atl. 629 (Md.), and Wheeler v. City, 108 N. W. 1057 (Ia.) The same rule would apply to granting a right to a private party to occupy a part of the street with a vault, which would interfere with the public use of the street for gas pipes, water pipes, underground railroads, and other public accommodations. Therefore, I think the court should have put its decision upon this ground, rather than upon the ground of prior occupation by another corporation. A quasi-public corporation that is accommodating the public and is subject to the laws of the state in enforcing and regulating that accommodation, has rights under its franchise in the public highway for that purpose.

Notwithstanding that city councils know that they cannot sell rights to put bridges over streets or tunnels underneath for the accommodation of private parties, yet they give away those accommodations. This has always been a source of graft. Private parties wanting to get what they know they cannot get legally, usually go to an alderman and by the use of money, interest him in getting an unlawful ordinance passed through the council. Whenever a city council attempts to give away what belongs to the state in its sovereignty, the act ("permit") bears the suspicion of graft. It is in the nature of a bailor giving away property entrusted to him.

CHARLES M. SCANLAN.

Milwaukee, Wis.

BOOK REVIEWS.

Lawyers' Common-Place Book. This is a blank book, closely ruled on fine ledger paper with an alphabetical index of over one thousand titles and subjects. It is a very valuable adjunct to any lawyer's desk. The work was compiled and arranged by a member of the New York City Bar. The plan of this work grew out of the author's own wants, and his experience in using other common-place books. Its practical utility has been tested by his own experience. The usefulness of some sort of a common-place book is recommended by every practicing attorney, including Fulbec, Roger North, Lord Hale, Phillips, and Locke. Lord North says, "Common-placing is so necessary that without a wonderful, I might say miraculous fecundity of memory, three parts of reading in four will be utterly lost to one who useth it not." That distinguished and accomplished scholar, William Wirt, remarks, "Old-fashioned economists will tell you never to pass an old nail, or an old horseshoe, or buckle, or even a pin without taking it up, because, although you may not want it now, you will find use for it some time or other." This principle is especially true with regard to legal knowledge.

Printed in one volume, 8x9 inches, 1,000 pages, bound in full leather, Russian ends and bands, and published by Williamson Law Book Co., Rochester, N. Y.

BOOKS RECEIVED.

Cyclopedia of Law and Procedure. Wm. Mack, LL. D., Editor-in-Chief. Vol. 32. New York. The American Law Book Company. Review will follow.

The Transfer Tax Land of the State of New York. Annotation and References and a complete table of cases and forms, together with an appendix containing the full text of the Decedent Estate Law. By George W. McElroy, Second Edition. Albany, N. Y. Matthew Bender & Company. Review will follow.

HUMOR OF THE LAW.

ADVICE FROM THE BENCH.

Some years ago many farmers along the line of the Missouri, Kansas & Texas Railway brought suit against it, and engaged a young lawyer named Brown. Judge Gantt, who was presiding, was compelled to throw many of the cases out of court because they were improperly brought. Brown was mad all over. Swelling with indignation, he arose and said. "Your honor, will you please tell me how it is possible in this court to get justice against a railroad company?"

Judge Gantt quietly ignored the contempt of court shown by the lawyer and asked: "Do you wish an answer to that question, Mr. Brown?"

"Yes, sir," defiantly replied the indignant lawyer; "yes, sir, and I want to know how a farmer can get his case into this court so that it will be heard."

Judge Gantt smiled and said: "Well, first, Mr. Brown, I'd advise the farmer to hire a lawyer."

Brown wilted.—Cleveland Leader.

THE LAW'S DELAYS.

"I understand that you called on the plaintiff, Mr. Barnes. Is that so?" questioned Lawyer Fuller, now chief justice.

"Yes," answered the witness.

"What did he say?" next demanded Fuller.

The attorney for the defense jumped to his feet and objected that the conversation could not be admitted in the evidence. A half-hour's argument followed, and the judges retired to their private room to consider the point.

An hour later the judges filed into the court-room and announced that Mr. Fuller might put his question.

"Well, what did the plaintiff say, Mr. Barnes?"

"He weren't at home, sir," came the answer without a tremor.—Success Magazine.

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort and of all the Federal Courts.

1. **Accord and Satisfaction**—New Consideration.—Where a debtor pays a part of the debt and does some substantial thing as an additional consideration for a promise to accept the less sum in full satisfaction, legal effect will be given to the compact.—Roberts v. Banse, N. J., 72 Atl. 452.

2. **Action**—Equitable Relief.—An action to recover land at law is turned into a suit in equity by the pleading of equitable matter in the answer, entitling defendants to affirmative equitable relief.—Hubbard v. Slavens, Mo., 117 S. W. 1104.

3. **Appeal and Error**—Pleading.—An exception to the denial of a motion to strike out part of a pleading is waived by pleading further.—Hubbard v. Slavens, Mo., 117 S. W. 1104.

4. **Assignments for Benefit of Creditors**—Set Off.—A debtor of an assignor for benefit of creditors held not entitled to set off what he paid as accommodation indorser of the assignor's note not due at time of the assignment.—Richardson v. Anderson, Md., 72 Atl. 485.

5. **Attachment**—Dismissal.—Where the cause must be reversed and remanded for a new trial on the original cause of action, the ancillary attachment proceeding must also be remanded with instruction to sustain it in case judgment is obtained by plaintiff on the new trial.—Hogg v. Thurman, Ark., 117 S. W. 1070.

6. **Bankruptcy**—Discharge.—A discharge in bankruptcy held not to prevent taking a judgment against the bankrupt on a bond to discharge an attachment, so that the attachment creditor might proceed against the sureties on the bond.—Kenrick & Roberts v. Warren Bros. Co., Md., 72 Atl. 461.

7. **Bills and Notes**—Bona Fide Holder.—Before one can claim to be an innocent purchaser of a negotiable paper for value and without notice, the consideration paid must be more than merely nominal, but any substantial consideration is sufficient.—Hogg v. Thurman, Ark., 117 S. W. 1070.

8.——Bona Fide Holder.—If a note be indorsed in blank, or payable or indorsed to bearer, one acquiring it from a robber or finder bona fide and before maturity may retain it against the true owner.—Warren v. Smith, Utah, 100 Pac. 1069.

9.——Validity.—Notes executed by an aged woman under hallucinations, while suffering from nervous prostration, and who had attempted suicide, cannot be enforced against her estate.—In re Killen's Estate, Pa., 72 Atl. 521.

10. **Brokers**—Commissions.—One who is the procuring cause of a sale of real estate, but not himself the agent of the owner, is not entitled in his own right, as against the owner, to any of the commissions.—Mueller v. Bell, Tex., 117 S. W. 993.

11.——Sale of Land.—The owner of land sold by himself alone in good faith is not liable for commissions to a broker who was not gvien an exclusive agency.—English v. William George Realty Co., Tex., 117 S. W. 996.

12. **Carriers**—Carriage of Goods.—The right of action against a carrier for loss of goods follows the ownership of the goods, and any one having a beneficial interest may maintain the action.—Lloyd v. Haugh & Keenan Storage & Transfer Co., Pa., 72 Atl. 516.

13.——Carriage of Live Stock.—Where horses were shipped under a written contract, whereby the shipper assumed all risk of delay in transportation, the burden was on the railroad to prove that a delay was not due to its negligence.—Jolliffe v. Northern Pac. R. Co., Wash., 100 Pac. 977.

14.——Condition of Waiting Room.—A carrier held bound to keep its waiting room in a safe condition for the benefit of persons accompanying or meeting passengers.—St. Louis, I. M. & S. Ry. Co. v. Grimsley, Ark., 117 S. W. 1064.

15.——Contributory Negligence.—It is not contributory negligence in law for a passenger to alight from a slowly moving train.—Sevier v. Southern Ry. Co., S. C., 64 S. E. 390.

16.——Delay in Transportation.—A consignee, not shown to be either the owner or the holder of the bill of lading, cannot recover the penalty imposed for delay in transporting freight, unless he proves that he was injured.—Fullerton v. Atlantic Coast Line R. Co., S. C., 64 S. E. 142.

17.——Limiting Liability.—A carrier held not entitled to limit its liability by notice, unless brought to the knowledge of the shipper and assented to by him.—Faulk v. Columbia, N. & L. R. Co., S. C., 64 S. E. 383.

18.——Non-Performance of Obligation.—Results attributed to a defective roadbed and defective equipment afford no excuse for the nonperformance of a carrier's duty to safely deliver a shipment at its destination within a reasonable time.—Thompson v. Quincy, O. & K. C. R. Co., Mo., 117 S. W. 1193.

19.——Wrongfully Searching Passenger.—If the station agent wrongfully calls an officer to search a passenger and points him out as a violator of the law when he is not, the company would not be relieved from responsibility because he believed, or had been informed, that the passenger had a pistol.—Texas Midland R. Co. v. Geraldon, Tex., 117 S. W. 1004.

20. **Charities**—Liability for Torts.—A charitable institution, whether public or private,

held not liable for its torts, though the person injured is its servant.—Whittaker v. St. Luke's Hospital. Mo., 117 S. W. 1189.

21. **Chattel Mortgages**—Retention of Possession.—A deed of trust, on a stock of merchandise permitting the debtor to remain in possession and dispose of the property, held fraudulent as to creditors.—Gilbert v. Peppers, W. Va., 64 S. E. 361.

22. **Constitutional Law**—Conflicting Amendments.—Where a section of the Constitution is amended by two amendments at the same time, and they are irreconcilable, both must fail.—Utter v. Mosley, Idaho, 100 Pac. 1058.

23.——Statutes.—Nothing short of a plain and palpable repugnancy between the constitution and a statute will warrant the courts in holding the statute void.—Willis v. Kalmbach, Va., 64 S. E. 342.

24. **Conversion**—Right of Heirs.—Where realty is converted into personalty, pursuant to the directions of the testator ordering the sale of his land, the heir is not excluded unless testator manifests a clear intention that the proceeds shall go to the next of kin.—In re Alabone's Estate, N. J., 72 Atl. 427.

25. **Contracts**—Agreements for Benefit of Third Persons.—Where one person makes a promise for the benefit of a third, the latter may sue thereon.—Ancrum v. Camden Water, Light & Ice Co., S. C., 64 S. E. 151.

26.——Construction.—Where the language of a contract given without consideration was on a printed form, and its meaning was doubtful, it should be construed most strongly against the party who drew the contract.—Hardy v. Ward, N. C., 64 S. E. 171.

27. **Corporations**—Action Between Stockholders and Officers.—The liability of one of several corporate directors who have mismanaged the corporate property is several as well as joint, and in a stockholder's suit for redress it is not necessary to join all the directors or their legal representatives.—Sigwald v. City Bank, S. C., 64 S. E. 398.

28.——Fraudulent Transactions.—An officer or director of a corporation, who seeks to purchase the stock of a stockholder, held required to disclose to the stockholder facts which have come to him by virtue of his relation to the company and not known to the stockholder.—Steinfeld v. Nielsen, Ariz., 100 Pac. 1094.

29.——Liability for Torts.—A corporation held liable for malicious libel or for willful slander by its agent, while acting within the scope of his employment.—Hypes v. Southern Ry. Co., S. C., 64 S. E. 395.

30. **Customs and Usages**—Exchange of Courtesies.—A mutual exchange of courtesies binding on neither party, though customary at a port, does not become of binding force on a contract there made.—Pitch Pine Lumber Co. v. Geo. E. Wood Lumber Co., Fla., 48 So. 993.

31. **Criminal Law**—Confessions.—A conviction based alone on an extrajudicial confession of accused cannot be sustained.—West v. State, Ga., 64 S. E. 130.

32.——Constitutional Provisions.—The Sixth Amendment to the federal constitution held applicable to federal procedure only.—Dies v. State, Tex., 117 S. W. 979.

33.——Reception of Verdict.—After verdict of not guilty returned, and discharge of the jury, they cannot be recalled to testify that they intended to find defendant guilty.—Petitti v. State, Okla., 100 Pac. 1122.

34. **Criminal Trial**—Death of Judge.—Where the trial judge died after conviction and a successor was illegally appointed who passed on a motion for new trial, an appeal therefrom would be invalid and the appellate court would have no jurisdiction.—Ellis v. State, Tex., 117 S. W. 978.

35.——Misdemeanors.—Whether an indictment is joint or several, any defendant accused of a misdemeanor may be convicted by proof either that he personally committed the offense or aided another.—Loeb v. State, Ga., 64 S. E. 338.

36. **Death**—Damages.—In an action for wrongful death, recovery is limited to the present value of the pecuniary aid plaintiffs have a reasonable expectation that decedent would have contributed to them had he lived, and excluding any allowance for grief and loss of society and affection.—Missouri, K. & T. Ry. Co. of Texas v. Williams, Tex., 117 S. W. 1043.

37. **Deeds**—Construction.—The contemporaneous construction of a deed by the parties evidenced by the giving and the taking of possession held to fix the intent of the parties. In re City of Seattle, Wash., Schlossmacher v. Beacon Place Co., Id., 100 Pac. 1013.

38.——Quit-Claim.—A purchaser for value under a quit-claim deed held to acquire only whatever title the grantor has.—Starr v. Bartz, Mo., 117 S. W. 1125.

39. **Descent and Distribution**—Heirs and Next of Kin.—In determining the degrees of relationship at common law between first cousins of an intestate claiming as descendants of his grandfather, and grandnieces claiming as descendants of his sister, the grandfather cannot be taken as the common ancestor.—Hoffman v. Watson, Md., 72 Atl. 479.

40.——Who are Heirs.—No one can be heir to the living; one's heirs being his surviving descendants who are capable of inheriting.—Price v. Griffin, N. C., 64 S. E. 372.

41. **Divorce**—Impeachment.—A decree of divorce cannot be collaterally impeached by evidence that plaintiff had not had the required residence in the state.—In re McNeil's Estate, Cal., 100 Pac. 1086.

42. **Easements**—Reservations and Exceptions.—Implied reservations, as against the express covenants of a deed, are to be limited to ways of strict necessity, and that the land was practically given by the grantor to the grantee is immaterial.—Dabney v. Child, Miss., 48 So 897.

43. **Ejectment**—Possession by Defendant.—Ejectment will not lie unless defendant is in actual possession of the land at the commencement of the action.—Hayden v. Goodwin, Mo., 117 S. W. 1129.

44.——Right to Possession.—To entitle plaintiff in ejectment to recover, he must show in himself a present right of possession.—Demps v. Hogan, Fla., 48 So. 998.

45. **Election of Remedies**—Waiver.—If only one remedy exists, and a mistaken remedy is pursued, the proper remedy is not thereby waived.—Hays v. Weeks, Fla., 48 So. 997.

46. **Electricity**—Negligence.—It may be assumed that an electric wire is insulated at a place where it ought to be for the safety of persons.—Thornburg v. City & E. G. R. Co., W. Va., 64 S. E. 358.

47. **Eminent Domain**—Delegation of Power.—The power to condemn land is an attribute of sovereignty possessed by the state, recognized, not granted, by the constitution, and, to be exercised by others than the state, it must be by some constitutional or statutory provision.—Gasaway v. City of Seattle, Wash., 100 Pac. 991.

48.——Irrigation Canal.—That a proposed canal will irrigate more land than a canal, a part of whose right of way it is sought to condemn, held not to make it a more necessary public use.—Portneuf Irrigating Co. v. Budge, Idaho, 100 Pac. 1046.

49. **Estoppel**—Constructive Knowledge.—Constructive knowledge of what the records show relative to the title to real estate cannot be made the basis of a charge of fraudulent silence and estoppel, where there is positive proof that there was no actual knowledge.—Starr v. Bartz, Mo., 117 S. W. 1125.

50.——Intent.—One may be estopped by his conduct whether or not he intended that others should act on the strength of it, if it induced the belief that his intention was compatible with his conduct.—Ashley v. Pick, Ore., 100 Pac. 1103.

51.——Persons Affected.—An estoppel in pais enforceable against plaintiff's ancestor held enforceable against plaintiffs to bar their claim to the land in question.—Hubbard v. Slavens, Mo., 117 S. W. 1104.

52. **Evidence**—Burden of Proof.—Where it is is necessary to make a character of proof which, under the circumstances, is exclusively within the knowledge of one or the other of the parties, the burden of proof is on the party possessing such knowledge.—Jolliffe v. Northern Pac. R. Co., Wash., 100 Pac. 977.

53.——Opinion Evidence.—Testimony of witnesses bearing close family, social, or business relations to a grantor as to his mental condition is entitled to great weight.—Jones v. Thomas, Mo., 117 S. W. 1177.

54.——Parol Evidence.—The rule barring parol evidence to vary a written contract does not apply to a modification or waiver of written provisions.—Norris v. China Traders' Ins. Co., Wash., 100 Pac. 1025.

55.——Presumptions.—It will be presumed in a will contest, in the absence of evidence to the contrary, that testator was discharged from the asylum because he had become sane.—In re Thorp's Will, N. C., 64 S. E. 379.

56. **Executors and Administrators**—Discharge of Surviving Administrator.—Where surviving administrator makes a final return and is allowed for services of himself and his co-administrator, representative of deceased co-administrator has no right to prevent discharge because commissions due deceased co-administrator have not been paid.—Groover v. Ash, Ga., 64 S. E. 323.

57.——Employment of Broker.—An executor, employing a broker to sell land of the estate, binds himself individually, and not the estate, for the broker's services.—Hickman-Coleman Co. v. Leggett, Cal., 100 Pac. 1072.

58. **Factors**—Power to Sell.—Commission merchants, who agree with a shipper to make such advances on cotton as the shipments justify, have power to sell in a proper market the cotton shipped and pay the advances from the proceeds.—Dreyfuss v. S. Gumble & Co., La., 48 So. 958.

59. **Fire Insurance**—Time for Bringing Suit.—A stipulation in an insurance policy limiting suits on a policy to one year after the loss held waived by beginning a suit to cancel the policy.—Phoenix Ins. Co. v. Smith, Miss., 48 So. 1020.

60. **Fraud**—Quantity of Land Sold.—A purchaser induced by fraud to purchase land in gross cannot recover for a mere deficiency in the quantity of the land.—Gordon v. Rhodes & Daniel, Tex., 117 S. W. 1023.

61.——Representations.—In an action by the buyer of a gin for fraudulent representations of the seller as to its condition, plaintiff held not entitled to damages for expenses incurred and services performed by him in endeavoring to operate the gin.—Wimple v. Patterson, Tex., 117 S. W. 1034.

62. **Frauds, Statute Of**—Contracts Required to be in Writing.—A contract required by the statute of frauds to be in writing must be deemed not to have been consummated until reduced to writing and subscribed.—Allen v. Kitchen, Idaho, 100 Pac. 1052.

63.——Verbal Conveyance of Land.—An estate in land may be transferred from one to another without writing, by a verbal sale accompanied by actual possession.—Hubbard v. Slavens, Mo., 117 S. W. 1104.

64.——Written Contracts.—A contract required by the statute of frauds to be in writing must be deemed not to have been consummated until reduced to writing and subscribed.—Allen v. Kitchen, Idaho, 100 Pac. 1052.

65. **Fraudulent Conveyances**—Knowledge of Grantee.—A son, to whom his father transferred all of his property in expectation of being sued for libel, held a knowing participator in the transaction.—Washington Nat. Bank v. Beatty, N. J., 72 Atl. 428.

66.——Preferences.—An honest debt may be used to hinder and defraud creditors, and that it is a bona fide debt is a mere circumstance, bearing on the question of good faith.—Gilbert v. Peppers, W. Va., 64 S. E. 361.

67.——Rights of Grantor.—A debtor, having conveyed his property to defraud his creditors, held not entitled to sue in equity to recover the same.—Lankford v. Lankford, Ky., 117 S. W. 962.

68.——Subsequent Creditors.—Subsequent creditors may impeach a deed for fraud directed against them.—Gilbert v. Peppers, W. Va., 64 S. E. 361.

69. **Garnishment**—Offset by Garnishee.—A garnishee cannot set off an unliquidated claim for damages in compensation of the amount owing his creditor.—Monroe Grocer Co. v. J. A. Perdue & Co., La., 48 So. 1002.

70. **Habeas Corpus**—Custody of Children.—In awarding the custody of children, the court should exercise a wise discretion, looking to the real welfare of the children as the principal consideration.—Ex parte Rembert, S. C., 64 S. E. 150.

71. **Homestead**—Abandonment.—To constitute an abandonment of a homestead, it must appear that there was a removal with a fixed intention never to return.—Armstrong v. Neville, Tex., 117 S. W. 1010.

72.——Mortgage as Affecting Quantity of Land.—The fact thaat there is a mortgage on homestead land, thus cutting down the net value thereof, does not authorize the claim of a greater quantity of land than could be claimed if there were no mortgage.—Bennett Bros. v. Dempstey, Miss., 48 So. 901.

73. **Homicide**—Burden of Proving Malice.—Though malice is presumed from the fact that defendant shot deceased, the burden is on the prosecution to show such deliberation and premeditation as to justify a conviction of murder in the first degree.—State v. Roberson, N. C., 64 S. E. 182.

74.——Self-Defense.—Whether one used unnecessary force in killing another in self-defense is a question for the jury.—State v. Quick, N. C., 64 S. E. 168.

75. **Indictment and Information**—Trespass.—A complaint charging that accuser trespassed after warning, and refused to leave the premises after being warned to do so, charged two offenses conjunctively.—Templin v. State, Ala., 48 So. 1027.

76 **Interstate Commerce**—Interference by States.—Revisal 1905, Sec. 2633, subjecting a carrier to a penalty for failure to inform the consignee of the freight charges and to deliver the freight on tender or payment of the charges, held not an interference with interstate commerce.—Hockfield v. Southern Ry. Co., N. C., 64 S. E. 181.

77. **Intoxicating Liquors**—Furnishing to Minor.—Where neither an express company nor its agent knows that a package delivered to a minor contains intoxicating liquor, the company held not guilty of furnishing liquor to a minor in violation of Pen. Code 1895, Sec. 444.—Southern Express Co. v. State, Ga., 64 S. E. 341.

78. **Judgment**—Assignment.—An assignor of a judgment warrants that it is a valid subsisting obligation against the debtor for the amount specified therein, and has not been paid.—Camp Mfg. Co. v. Durham Fertilizer Co., N. C., 64 S. E. 188.

79.——Disposition of Issues.—A judgment for plaintiff is not final unless it disposes of the matters pleaded by defendant setting up a cross-action against co-defendant.—Pecos & N. T. Ry. Co. v. Epps & Matsler, Tex., 117 S. W. 1012.

80.——Establishment of One of Several Pleas.—Establishment of one of several pleas as fully entitles defendant to recover as proof of all would.—Horan v. Gray & Dudley Hardware Co., Ala., 48 So. 1029.

81. **Jury**—Condemnation Proceedings.—In the absence of a specific constitutional provision granting the right of trial by jury in condemnation proceedings, such right does not exist.—Portneuf Irrigating Co. v. Budge, Idaho, 100 Pac. 1046.

82. **Landlord and Tenant**—Liability for Nuisance.—A lessee is in general solely liable to third persons for an improper use of the land, unless a nuisance exists thereon at the time of the lease, or the injury results from the use of something theretofore put on or done to the land.—Canon City & C. C. R. Co. v. Oxtoby, Colo., 100 Pac. 1127.

83.——Lien on Crops.—Tomatoes delivered by a tenant to merchants and shipped out of the state and the proceeds credited to his account held converted by the merchants in the state, so as to render them liable to the landlord on his lien for rent, under Code 1906, Sec. 2832.—Petts & Norman Co. v. Baker, Miss., 48 So. 898.

84.——Surrender of Lease.—A tenant may surrender his lease by parol, and after such surrender can have no right of possession or entry under it.—Schwin v. Perkins, N. J., 72 Atl. 454.

85.——Summary Proceedings to Dispossess.—A landlord cannot, while retaining a check sent by the tenant for rent due, institute summary proceedings, under Civ. Code 1902, Sec. 2423, to dispossess the tenant.—English v. McDowall, S. C., 64 S. E. 390.

86.——Tenantable Condition of Premises.—Tenants under a lease to take effect upon the expiration of another lease held not estopped to rescind because the premises were not in a suitable condition.—Thompson v. Walker, Ga., 64 S. E. 336.

87. **Libel and Slander**—Peremptory Instructions.—In a libel action, where the evidence was undisputed that a publication, libelous per se as to plaintiff, was made by defendant, a verdict for plaintiff should have been directed.—James v. Ft. Worth Telegram Co., Tex., 117 S. W. 1028.

88. **Licenses**—Estoppel.—A grantee of one of adjacent owners, constructing a building on their lots pursuant to a plan calling for a party wall and over it a common hallway for the second story, held estopped from obstructing the common hallway.—Binder v. Weinberg, Miss., 48 So. 1013.

89. **Life Insurance**—Failure to Pay Premium.—The failure to pay the premium on a life policy does not of itself forfeit the contract, unless the policy so provides.—Equitable Life Assur. Society of United States v. Golson, Ala., 48 So. 1034.

90. **Limitation of Actions**—Breach of Warranty.—Where unsound property is sold with a warranty, the warranty is broken as soon as made and limitations run from the date of sale.—Woodland Oil Co. v. A. M. Byers & Co., Pa., 72 Atl. 518.

91.——Compation of Period.—The running of the statute of limitations will not be interrupted, after beginning to run, by the disability of a claimant.—Roe v. Doe ex dem. Rowe, Ala., 48 So. 1033.

92.——Defense of Set-Off.—Limitations may be set up against a claim sought to be used as a set-off where it could successfully be set up against the claim if sought to be enforced in assumpsit.—Woodland Oil Co. v. A. M. Byers & Co., Pa., 72 Atl. 518.

93.——Delivery of Deed.—An action to set aside a deed of land for want of delivery is not barred by limitations where there was no adverse holding by the grantee.—Shute v. Shute, S. C., 64 S. E. 145.

94. **Master and Servant**—Duty of Master.—It is the duty of the master to make reasonable efforts to ascertain the qualifications of a servant employed to work with others.—Long v. McCabe & Hamilton, Wash., 100 Pac. 1016.

95.——Duty to Warn.—A master is only bound to point out hidden dangers at the place of work or machinery if he knows of such dangers, or could have known thereof by the exercise of ordinary care.—Berley v. Western Union Telegraph Co., S. C., 64 S. E. 157.

96. **Mines and Minerals**—Estate in Minerals.—A separate estate may be created in minerals either by grant or exception.—Gordon v. Park, Mo., 117 S. W. 1163.

97. **Mortgages**—Deeds.—Where a deed constitutes a mortgage at its inception, it remains such; no subsequent agreement between the parties less formal than a deed availing to pass title.—Clambey v. Copland, Wash., 100 Pac. 1031.

98.——Limitations.—The limitation for foreclosure of a mortgage held not changed by giving by mistake a receipt in full of the mortgage debt.—Montague v. Priester, S. C., 64 S. E. 393.

99. **Municipal Corporations**—Assessments for Street Improvements.—Owners of property assessed for a street improvement, who sue to enjoin the collection of the assessment on the ground of the invalidity of the contract for the improvement, must make the contractor a party.—Boles v. Kelley, Ark., 117 S. W. 1073.

100. **Negligence**—Concurring Negligence.—Where an accident occurs from two causes, each due to negligence of different persons, each person whose acts contributed to the accident are liable for the injury resulting, and the negligence of one is no excuse for the negligence of the other.—Missouri, K. & T. Ry. Co. of Texas v. Williams, Tex., 117 S. W. 1043.

101.——Proximate Cause.—The proximate cause of an injury is, in general, that act or omission which immediately causes the injury. —Pierson v. Northern Pac. Ry. Co., Wash., 100 Pac. 999.

102. **New Trial**—Cold Jury Room.—A complaint of the foreman of a jury that the room had been cold, and that if it had been properly heated there would or might have been a different verdict, held not ground for setting aside the verdict, where not made until after it had been returned.—Woods v. Klein, Pa., 72 Atl. 523.

103.——Quotient Verdict.—The court held not authorized to set aside a verdict as a quotient verdict, in the absence of a showing that it was arrived at in compliance with a previously formed agreement.—Missouri, K. & T. Ry. Co. of Texas v. Light, Tex., 117 S. W. 1058.

104. **Notice**—Sufficiency of Service.—An attorney cannot, by handing back copy of a notice served on him to the party serving it, avoid such actual service.—Myers v. Julian, Fla., 48 So. 998.

105. **Partition**—Voluntary Partition. — The husband of an heir held to take no greater title, because joined with her as a joint grantee in a voluntary partition deed, than he would have taken as her husband, if not named at all.—Starr v. Bartz, Mo., 117 S. W. 1125.

106. **Pleading**—Variance.—Where a written agreement was consistent with some of the allegations of the complaint, there was no fatal variance because it was not responsive to other allegations.—Heron v. Weston, Colo., 100 Pac. 1130.

107. **Principal and Agent**—Existence of Relation.—A transfer company in the habit of hauling goods for a consignee and others in a town is only the agent of the consignee as to goods actually hauled.—Hockfield v. Southern Ry. Co., N. C., 64 S. E. 181.

108. **Property**—Standing Timber.—Standing timber, when sold by the owner of the land with the right to enter and remove it, becomes personal property, and ceases to be a part of the realty.—Montgomery v. Peach River Lumber Co., Tex., 117 S. W. 1061.

109. **Railroads**—Injury to Adjoining Land.—A lessor railroad company, having constructed a borrow pit on its right of way, held liable to an adjoining proprietor for injuries to his land from seepage.—Canon City & C. C. R. Co. v. Oxtoby, Colo., 100 Pac. 1127.

110. **Reformation of Instruments**—Description of Premises.—Equity cannot add to the description of premises in a contract of sale insufficient under the statute of frauds.—Allen v. Kitchen, Idaho, 100 Pac. 1052.

111. **Remainders**—Vested and Contingent.—A remainder is vested where there is a present capacity to convey an absolute title to the remainder, and where the remainder is limited to a person not ascertained by the terms of the instrument it is contingent.—Buxton v. Kroeger, Mo., 117 S. W. 1147.

112. **Sales**—Inadequacy of Price.—To determine, in a suit setting aside a sale on the ground of the buyer's fraud, whether the price was so grossly inadequate as to amount to fraud, the court must look at the facts as they existed at the time of the contract of sale.—Steinfeld v. Nielsen, Ariz., 100 Pac. 1094.

113. **Specific Performance**—Laches. —Party holding option cannot wait an unreasonable time until property has increased in value and then enforce specific performance.—Joffrion v. Gumbel, La., 48 So. 1007.

114.——Parol Sale of Land.—A parol contract of sale of land will be specifically enforced, where the vendor has put the purchaser in possession and he has complied with the contract. —Demps v. Hogan, Fla., 48 So. 998.

115. **Subrogation**—Necessity for Payment of Debt.—The maker of a note held not entitled to be subrogated to the rights of the payee and another as to collaterals without first paying the note.—Plunkett v. State Nat. Bank, Ark., 117 S. W. 1079.

116. **Telegraphs and Telephones**—Presentation of Claims.—A provision of a telegraph contract, requiring filing of claims within 60 days after the filing of the message for transmssion, held valid.—Sykes v. Western Union Telegraph Co., N. C., 64 S. E. 177.

117. **Tenancy in Common**—Liability of Tenant in Exclusive Possession.—One tenant in common in exclusive possession is not liable for the rental value of the land, but only for the profits made or rents actually received.—Griffin v. Griffin, S. C., 64 S. E. 160.

118. **Trover and Conversion**—Demand.—Trover lies without previous demand against one improperly possessing himself of a note stolen from the owner, or against one receiving payment under a forged indorsement.—Warren v. Smith, Utah, 100 Pac. 1069.

119. **Trusts**—Spendthrift Trust.—A person cannot be the real owner of property with full right to deal with it as he pleases, and keep the same from his creditors; and what he cannot do for himself in this regard cannot be done for him by another.—In re Morgan's Estate, Pa., 72 Atl. 498.

120. **Vendor and Purchaser**—Breach of Contract.—Where plaintiff contracted to convey a farm and certain personal property for a named sum, the value of the personal property, if not delivered, should be deducted from the consideration.—S. W. Slayden & Co. v. Palmo, Tex., 117 S. W. 1054.

121.——Notice.—One who has notice of facts putting him on inquiry held not a purchaser in good faith.—W. L. Moody & Co. v. Martin, Tex., 117 S. W. 1015.

122.——Performance of Contract.—A conveyance by a stranger to the title is not a cloud on the title of the true owner, and his vendee cannot rely on it as an excuse for rejecting the title.—Cummings v. Dolan, Wash., 100 Pac. 989.

123. **Wills**—Failure to Sign.—A paper approved by a person in his last illness, but not signed by him, though he was capable of asking another to sign for him, held not his will. —In re Butler's Estate, Pa., 72 Atl. 508.

124.——Homesteads.—Where the husband of a testatrix elects to take the fee-simple title to the homestead under the will, he cannot thereafter claim a homestead in the property devised.—Jarboe v. Hayden, Ky., 117 S. W. 961.

125.——Witnesses.—The signing of a will by testator held not required to be in the presence of the attesting witnesses.—Umstead v. Bowling, N. C., 64 S. E. 368.